

**FILE COPY**

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

**FINAL DECISION AND ORDER**

ROBERT O. DUSTRUDE, R.Ph.,  
RESPONDENT.

96 PHM 36

The parties to this action for the purposes of §227.53, Wis. Stats., are:

Robert O. Dustrude, R.Ph.  
1804 Oriole Lane  
Wausau, WI 54401

Wisconsin Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

**FINDINGS OF FACT**

1. Respondent Robert O. Dustrude (dob 11/8/28) is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #6047, originally granted on 6/23/51. Respondent is the owner and managing pharmacist of Dustrude's Family Pharmacy, Wausau, WI, where the conduct described below took place.

2. Respondent did, on February 29, 1996, refill prescriptions for patient B.K. for Capoten and Norvasc. At the time, with the patient's consent, he substituted a generic form of captopril for the Capoten. When preparing the prescriptions, respondent inadvertently labeled each prescription container with the label for the other container: thus the captopril was labeled as Norvasc, and the Norvasc was labeled captopril. Each of these medications is a white, round pill. The dosage instructions were to take the captopril 3 times per day, and the Norvasc once per day. Respondent followed the instructions and thus took three times the prescribed dosage of Norvasc, and only one-third the prescribed dosage of captopril. The patient suffered harm as a result of this error.

3. Respondent stated to the department's investigator that his usual procedure was to prepare both containers of medication, to prepare both labels, and then to put the labels on the containers after both were prepared. Further, respondent stated that he did not normally view the medication contents with the patient during the consultation.

4. On 9/18/96, a department investigator observed respondent transfer a refill of a prescribed drug to a patient without providing a consultation.

## CONCLUSIONS OF LAW

5. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

6. The conduct described in paragraph 2, above, violated § Phar 7.01(1)(d), Wis. Adm. Code. The conduct described in paragraph 4, above, violated § Phar 7.01(1)(e), Wis. Adm. Code. Each and every patient (or patient's agent) must receive a face-to-face consultation from a registered pharmacist (or supervised intern) at the time a prescribed drug or device is transferred to the patient in the pharmacy, whether the prescription is new or a refilled or renewed prescription. This duty is non-delegable and is not satisfied by having auxiliary staff ask if the patient has questions. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Robert O. Dustrude, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$200 within 30 days of this order.

IT IS FURTHER ORDERED, that the Board expresses its grave concern over the procedures used by respondent in this case. Respondent shall file with the Board within 45 days a written plan to prevent errors such as the labeling error described above.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$250, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 12<sup>th</sup> day of NOVEMBER, 1996.

WISCONSIN PHARMACY EXAMINING BOARD

George F. Christensen, R.Ph.  
a member of the board

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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

ROBERT O. DUSTRUDE R.Ph.,  
RESPONDENT.

STIPULATION  
96 PHM 36

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has been provided the opportunity to seek legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

Robert O. Christensen 11-6-96  
Respondent Date

Arthur Huxford 11/8/96  
Prosecuting Attorney Date  
Division of Enforcement

# Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech  
TRS# 1-800-947-3529, impaired only

## GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On November 12, 1996, the Pharmacy Examining Board  
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a  
forfeiture.

The amount of the costs assessed is: \$250.00 Case #: 96 PHM 36

The amount of the forfeiture is: \$200.00 Case # 96 PHM 36

Please submit a check or a money order in the amount of \$ 450.00

The costs and/or forfeitures are due: December 12, 1996

NAME: Robert O. Dustrude, R.Ph. LICENSE NUMBER: 6047

STREET ADDRESS: 1804 Oriole Lane

CITY: Wausau STATE: WI ZIP CODE: 54401

Check whether the payment is for costs or for a forfeiture or both:

X COSTS

X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL

       ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

**For Receipting Use Only**

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING  
1400 E. WASHINGTON AVE., ROOM 141  
P.O. BOX 8935  
MADISON, WI 53708-8935**

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

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Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING  
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Robert O. Dustrude, R.Ph.,

AFFIDAVIT OF MAILING

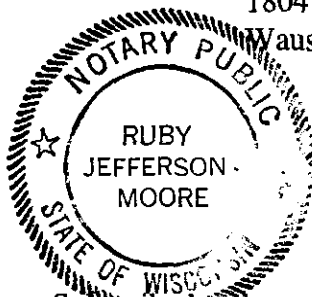
Respondent.

STATE OF WISCONSIN     )  
                                      )  
COUNTY OF DANE         )

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On November 13, 1996, I served the Final Decision and Order dated November 12, 1996, and Guidelines for Payment of Costs and/or Forfeitures upon the Respondent Robert O. Dustrude, R.Ph. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 213 340 159.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Robert O. Dustrude, R.Ph.  
1804 Oriole Lane  
Wausau WI 54401



Subscribed and sworn to before me

this 13<sup>th</sup> day of November, 1996.

Ruby Jefferson-Moore

Notary Public, State of Wisconsin  
My commission is permanent.

Kate Rotenberg

Kate Rotenberg  
Department of Regulation and Licensing  
Office of Legal Counsel

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## NOTICE OF APPEAL INFORMATION

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Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

November 13, 1996

### 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)